



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,579	01/12/2001	Robert F. Heard	91805001	1809

30184 7590 08/19/2003

MYERS & KAPLAN, INTELLECTUAL  
PROPERTY LAW, L.L.C.  
1827 POWERS FERRY ROAD  
BUILDING 3, SUITE 200,  
ATLANTA, GA 30339

[REDACTED] EXAMINER

HORTON, YVONNE MICHELE

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3635

DATE MAILED: 08/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/759,579</b>	Applicant(s) <b>Robert Heard et al.</b>
	Examiner <b>YVONNE M. HORTON</b>	Art Unit <b>3635</b>
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b> A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b> <p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Jun 10, 2003</u></p> <p>2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b>.      2b) <input type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>		
<b>Disposition of Claims</b> <p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-13 and 15-20</u> is/are pending in the application.</p> <p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6) <input checked="" type="checkbox"/> Claim(s) <u>1-13 and 15-20</u> is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.</p>		
<b>Application Papers</b> <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.</p> <p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>		
<b>Priority under 35 U.S.C. §§ 119 and 120</b> <p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:  1. <input type="checkbox"/> Certified copies of the priority documents have been received.  2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.  3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p> <p>*See the attached detailed Office action for a list of the certified copies not received.</p> <p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.</p> <p>15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</p>		
<b>Attachment(s)</b> <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</p> <p>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p>		

Art Unit: 3635

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1,2,4,5 and 10 stands rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,850,717 to SCHIEDEGGER et al. SCHIEDEGGER et al. discloses the use of a brickmolding (10') including a rectangular portion (20,100,200) having a bottom surface (BS), a top surface (TS), see the marked-up attachment, a flange portion (26) extending beyond the rectangular portion (20,100,200) in parallel relationship to the bottom surface (BS) and a channel (CH), see also the marked-up attachment, for receiving a siding member (12) therein. Regarding claim 2, the top surface (TS) is and carries the decorative portion. In reference to claims 4,5 and 10, the flange (26) is formed integrally with the brickmolding (10) and has pre-formed openings (50) to receive a fastener, column 6, lines 3-6 such that the flange (26) is affixed to the building adjacent the bottom surface (BS). Claims 1,2,11-13,15,16 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,090,174 to FRAGALE. Regarding claims 1 and 12, FRAGALE discloses the use of a brickmolding (10) affixed to a fenestration (F), column 4, line 25, for receiving a siding (30) wherein the brickmolding (10) includes a rectangular portion formed by (104) having a bottom surface (BS), see the marked-up attachment, a top surface (130), a flange portion (114) extending beyond the rectangular portion formed by (104) in

Art Unit: 3635

parallel relationship to the bottom surface (BS) and a channel (128) for receiving the siding member (30) therein. Regarding claims 2 and 13, the top surface (130) is and carries the decorative wood exterior, column 5, line 14 and column 7, lines 29 and 30. In reference to claims 11 and 19, the brickmolding (10) is comprised of a polyvinyl chloride material, (column 3, line 53 and column 5, line 15), and includes a foam insulating material (104). Regarding claims 15 and 16, the flange (114) is formed integrally with the brickmolding (10) such that the flange (114) is affixed to the building adjacent the bottom surface (BS) by a fastener (column 6, line 51).

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,090,174 to FRAGALE. As discloses in paragraph 6 above, FRAGALE discloses the basic claimed brickmolding except for explicitly stating that the fastener is received within a hole. Although a hole is not shown or discussed, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the flange of FRAGALE with openings/holes in order to more readily receive fasteners therethrough.

Art Unit: 3635

***Allowable Subject Matter***

5. Claims 3 and 6-9 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 12,13,15-19 and 20 remain as being allowable for the reasons indicated in the previous Office Actions.

***Response to Arguments***

7. Applicant's arguments filed 6/10/03 have been fully considered but they are not persuasive. Regarding the applicant's argument that the device of SCHIEDEGGER et al. is not a "brickmould" but rather a "trim" or "dentil molding"; brickmoulds, trim or dentil "moldings" are all similar aesthetic devices used to enhance the appearance of the perimeter of windows, doors, and other perimeter items such as on building exteriors. Both SCHIEDEGGER et al. And the instant application are direction to molding devices for certain or particular purposes.

In response to applicant's argument that the device of SCHIEDEGGER et al. is not a "brickmould" but rather a "trim" or "dentil molding", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to

Art Unit: 3635

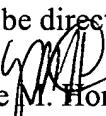
the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

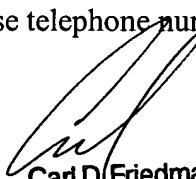
***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.

  
Yvonne M. Horton  
Patent Examiner  
Art Unit 3635  
August 13, 2003

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600